

## § 26.19

## 24 CFR Subtitle A (4–1–16 Edition)

### § 26.19 Request for production of documents.

(a) *Request to produce.* Any party may serve upon any other party a written request to produce, and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained—translated, if necessary, by the respondent into reasonably usable form, or to inspect, copy, test, or sample any designated tangible things that constitute or contain matters within the scope of § 26.18(a) and which are in the possession, custody, or control of the party upon whom the request is served.

(b) *Procedure.* The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

(c) *Response to request to produce.* The party upon whom the request is served shall serve a written response within 20 days after service of the request. A shorter or longer time may be directed by the hearing officer, or in the absence of such an order, agreed to by the parties in a written document that shall be timely submitted to the hearing officer. The response shall state, with respect to each item or category, whether inspection and related activities will be permitted as requested. If there are any objections to any requests, including objections to the requested form or forms for producing electronically stored information, the response shall state the reasons for such objections. If objection is made to part of an item or category, the part shall be specified and inspection of the remaining parts shall be permitted. If objection is made to the requested format or forms for producing electronically stored information—or if no form was specified in the request—the re-

sponding party must state the form or forms it intends to use. The party submitting the request may move for an order under § 26.18(c)(1) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(d) *Form of production.* Unless the parties otherwise agree, or the hearing officer otherwise orders:

(1) A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;

(2) If a request does not specify the format or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and

(3) A party need not produce the same electronically stored information in more than one form.

### § 26.20 Depositions.

(a) *Taking oral deposition.* A party may take the oral deposition of any person. Reasonable written notice of deposition shall be served upon the opposing party and the deponent. The attendance of a deponent may be compelled by subpoena where authorized by law or by other order of the hearing officer.

(b) *Testifying on oral deposition.* Each person testifying on oral deposition shall be placed under oath by the person before whom the deposition is taken. The deponent may be examined and cross-examined. The questions and the answers, together with all objections made, shall be recorded by the person before whom the deposition is to be taken, or under that person's direction.

(c) *Objections.* Objection may be made to questions or answers for any reason that would require the exclusion of the testimony under § 26.24 as if the witness were present and testifying at hearing. Objections shall be in short form, stating every ground for objection. Failure to object to any question or answer

shall be considered a waiver of objection, unless the parties agree otherwise. Rulings on any objections shall be made by the hearing officer at hearing, or at such other time requested by motion. The examination shall proceed, with the testimony being taken subject to the objections; the deponent may be instructed not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the hearing officer, or to present a motion for a protective order under § 26.18(c)(2).

(d) *Submission to deponent.* A transcript of the deposition shall be submitted to the deponent for examination and signature, unless submission is waived by the deponent and the parties. Any changes in form or substance that the deponent desires to make shall be entered upon the transcript by the person before whom the deposition was taken, with a statement of reasons given by the deponent for making them. The transcript shall then be signed by the deponent, unless the parties by stipulation waive the signing or the deponent is ill, cannot be found, or refuses to sign. If the transcript is not signed, the person before whom the deposition was taken shall sign it and state on the record the reason that it is not signed.

(e) *Certification and filing.* The person before whom the deposition was taken shall make a certification on the transcript as to its accuracy. Interested parties shall make their own arrangements with the person recording the testimony for copies of the testimony and the exhibits.

(f) *Deposition as evidence.* Subject to appropriate rulings by the hearing officer on objections, the deposition or any part may be introduced into evidence for any purpose if the deponent is unavailable. Only that part of a deposition that is received in evidence at a hearing shall constitute a part of the record in the proceeding upon which a decision may be based. Nothing in this rule is intended to limit the use of a deposition for impeachment purposes.

(g) *Payment of fees.* Fees shall be paid by the person upon whose application the deposition is taken.

#### § 26.21 Written interrogatories.

(a) *Service of interrogatories.* Any party may serve upon any other party written interrogatories, not to exceed 25 in number, including all discrete subparts, unless additional interrogatories are agreed to by the parties or leave to serve additional interrogatories is granted by the hearing officer.

(b) *Response to interrogatories.* Within 20 days after service of the request, the party upon whom the interrogatories are served shall serve a written response, unless the parties agree in a written document submitted to the hearing officer or the hearing officer determines that a shorter or longer period is appropriate under the circumstances. The response shall specifically answer each interrogatory, separately and fully in writing, unless it is objected to, in which event the objecting party shall state the reasons for any objections with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the hearing officer for good cause shown. If objection is made to only part of an interrogatory, the objectionable part shall be specified and the party shall answer to the extent that the interrogatory is not objectionable.

(c) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can by the party